S.B. Civil Revision Petition No.69/06
Panchayat Samiti Chhabra & Ors.
Vs.
Piyush Maheshwari

Date of Order : 12/07/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. S.K. Gupta, for petitioners

Instant revision petition has been filed at the instance of defendant-petitioners on rejection of their application filed under O.7 R.11 read with Section 151 CPC under order impugned dated 27th March, 2006.

Plaintiff-respondent filed a suit for permanent injunction against the present defendant-petitioners with regard to suit premises, which according to him, is in his possession. As alleged in the suit, shop in question was let out to the father of defendant Shri Shyam Sunder Maheshwari and because of some default, the Panchayat Samiti cancelled his allotment and initiated the process to take over the possession of the suit shop. Since his father died, the plaintiff-respondent filed a suit seeking declaration and permanent injunction for the said suit premises. After service of summon, the petitioners moved an application under O.7 R.11 CPC and raised their objection that no suit can be instituted against them without due compliance of Section 109 of Rajasthan Panchayati Raj Act, 1994 and in the absence whereof, the suit itself was not maintainable.

Learned trial Judge after taking into consideration the provisions of Section 109 of the Act and so also proceedings initiated by the petitioners against the plaintiff-respondent and the Rajasthan Public Premises [Eviction of Unauthorized Occupation] Act, 1964 and so also other material available, considered that if at all compliance of Section 109 has not been made, the petitioners are always free to raise their objection in their written statement and will be considered only at the stage of its adjudication.

I do not find any error in the finding recorded by the learned trial Judge in passing order impugned dated 27th March, 2006.

Consequently, the present revision fails and is hereby dismissed.

Counsel submits that a specific objection has been raised by them in the written statement with regard to very maintainability of the suit in view of Section 109 of the Act, 1994. If that be so, the learned trial court may consider the objection raised by the petitioners in their written statement and proceed in accordance with law.

[Ajay Rastogi],J.

FRB